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Federal Communications Commission

DA 98-957

DISPATCHED BY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b),)	MM Docket No. 98-74
Table of Allotments,)	RM-9269
FM Broadcast Stations.)	
(Eatonville, Wenatchee and Moses Lake,)	
Washington))	

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: May 13, 1998;

Released: May 22, 1998

Comment Date: July 13, 1998

Reply Comment Date: July 28, 1998

By the Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Barbara J. Geesman ("petitioner"), licensee of Station KKBV-FM, Channel 285A, Eatonville, Washington, proposing the substitution of Channel 285C3 for Channel 285A at Eatonville, and the modification of Station KKBV-FM's license accordingly. To accommodate the upgrade, petitioner also proposes the substitution of Channel 262C2 for Channel 285C2 at Wenatchee, Washington, and the modification of Station KKRK(FM)'s license accordingly; the substitution of Channel 285C1 for Channel 262C1 at Moses Lake, Washington, and the modification of Station KWIQ-FM's license accordingly. Petitioner states her intention to apply for the channel, if allotted.

2. We believe the proposal warrants consideration since the allotment of Channel 285C3 at Eatonville, Washington, would enable Station KKBV-FM to expand its service area. An engineering analysis has determined that Channel 285C3 can be allotted to Eatonville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction at petitioner's requested site.¹ Additionally, Channel 262C2 can be allotted at Wenatchee at Station KKRK(FM)'s presently licensed site;² and Channel 285C1 can

¹The coordinates for Channel 285C3 at Eatonville are North Latitude 46-50-19 and West Longitude 122-11-53.

²The coordinates for Channel 262C2 at Wenatchee are North Latitude 47-28-44 and West Longitude 120-12-49.

be allotted at Moses Lake at Station KWIQ-FM's presently licensed site.³ Since Eatonville, Wenatchee and Moses Lake are located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested.

3. We shall direct an Order to Show Cause to Pioneer Broadcasting Company, Inc., licensee of Stations KKRK(FM) and KWIQ-FM, as to why its licenses should not be modified to specify operation on Channel 262C2 in lieu of Channel 285C2 at Wenatchee, Washington, and be modified to specify operation on Channel 285C1 in lieu of Channel 262C1 at Moses Lake, Washington.

4. Whenever an existing licensee or permittee is ordered to change frequency to accommodate a new channel allotment, Commission policy requires the benefitting party, or parties, to reimburse the affected station for costs incurred. See Circleville, Ohio, 8 FCC 2d 159 (1967). Petitioner has stated her willingness to reimburse the licensee of Stations KKRK(FM) and KWIQ-FM for reasonable costs associated with moving to Channels 262C2 and 285C1, respectively.

5. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Eatonville, Washington	285A	285C3
Wenatchee, Washington	271C, 285C2	271C, 262C2
Moses Lake, Washington	257A, 262C1	257A, 285C1

6. Accordingly, IT IS ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, Pioneer Broadcasting Company, Inc., licensee of Station KKRK(FM), Wenatchee, Washington, and Station KWIQ-FM, Moses Lake, Washington, SHALL SHOW CAUSE why its licenses SHOULD NOT BE MODIFIED to specify operation on Channel 262C2 at Wenatchee, and Channel 285C1 at Moses Lake.

7. Pursuant to Section 1.87 of the Commission's Rules, Pioneer Broadcasting Company, Inc., may, not later than July 13, 1998, file a written statement showing with particularity why its licenses should not be modified as proposed in the Order to Show Cause. The Commission

³The coordinates for Channel 285C1 at Moses Lake are North Latitude 47-06-09 and West Longitude 119-14-26.

may call on Pioneer Broadcasting Company, Inc., to furnish additional information. If Pioneer Broadcasting Company, Inc., raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Pioneer Broadcasting Company, Inc., will be deemed to have consented to the modification as proposed in the Order to Show Cause and a final Order will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

8. IT IS FURTHER ORDERED, That the Secretary SHALL SEND, BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, a copy of this Notice of Proposed Rule Making and Order to Show Cause to the following:

Pioneer Broadcasting Company, Inc.
1326 Fifth Avenue, Suite 540
Seattle, Washington 98101
(Licensee of Stations KKRK(FM) and KWIQ-FM)

9. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

10. Interested parties may file comments on or before July 13, 1998, and reply comments on or before July 28, 1998, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Matthew H. McCormick, Esq.
Reddy, Begley, & McCormick
2175 K Street, N.W., Suite 350
Washington, D.C. 20037
(Counsel for Petitioner)

11. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

12. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making and Order to Show Cause to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making and Order to Show Cause to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making and Order to Show Cause to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the

Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.